

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 04-10731RWZ

DEBORAH A. WEINBERGER)
)
Plaintiff,)
)
v.)
)
)
ARNE OJALA and DOWN CAPE)
ENGINEERING, INC.)
)
Defendants)

**DEFENDANTS OJALA AND DOWN CAPE ENGINEERING'S MOTION TO
VACATE COURT'S ORDER OF 12/16/04**

Now comes Defendants' Down Cape Engineering and Ojala (Defendants) and moves this Honorable Court vacate the order entered granting Plaintiff's Second Motion to Compel (Document #14), said order having been entered on 12/16/04, without opposition.

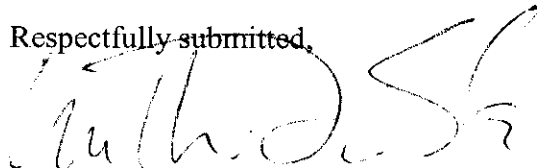
In support of the motion, counsel for the Defendants state that, due to clerical and administrative inadvertence, the motions, while received in this office, were administratively misfiled in the matter of Powers v. Ojala and Down Cape Engineering a companion case previously before this Honorable Court and subsequently settled. The Powers case is Docket No. 03CD 11838RWZ. The allegations in each complaint are nearly identical.

Defendants have moved as expeditiously as they could with their experts to complete the expert review and construct the opinion and disclose it to the Plaintiffs. In fact, disclosure of the expert report was made to Plaintiff on December 13, 2004, in advance of the Court's order on December 16. Defendants have completed the disclosure by forwarding an additional copy of the report together with the information that the Defendants' expert has no deposition or trial expert testimony within the last four years and charges a rate of \$150.00 per hour.

All other discovery has been provided and discovery issues have been resolved between counsel. There is an additional deposition of a witness which has yet to be concluded and counsel for the Defendants has suggested that counsel and their respective experts get together to narrow, as much as possible, the issues presented in the two expert reports.

Wherefore, and in light of the compliance by Defendants in advance of the Court's order of December 16, the Defendants respectfully request that the Court vacate its order of December 16, 2004.

Respectfully submitted,

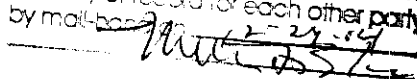


William F. Burke, Esq.

Attorney for Defendants Ojala and Down
Cape Engineering, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the
above document was served upon the
attorney of record for each other party
by mail-bearing.


12-29-04